IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 619 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANOJKUMAR ACHALAJI KHATRI

Appearance:

MR MA BHUKHARI, APP for Petitioner

MR HR PRAJAPATI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 28/09/2000

ORAL JUDGEMENT

#. The order dated June 24, 1999 of the Additional Sessions Judge, Ahmedabad is under challenge in this revision.

#. The brief facts giving rise to this revision are

as under :

Truck No.GJ-1-V-5720 is owned by one Rajkiran Ramlal. Under an agreement dated April 29, 1998, this truck came in possession of the respondent Manojkumar Achalaji Khatri. He was plying the truck and was in its actual possession. On August 22, 1988 the DCB Police raided the said truck when it was parked near Mahakali Temple, Asarwa. Huge quantity of illicit liquor worth Rs.7,12,050=00 was found in the truck. The truck was accordingly seized. At the time of raid, the truck number shown on the number plate was GJ-7-8252. On enquiry by the police it was found that this truck was not registered. On further enquiry, on the basis of chassis number and engine number, it was found that the correct number of the truck is GJ-1-V-5720. After the seizure of the truck, the respondent applied for its release and further prayed for interim custody of the truck alleging that he had no knowledge that the driver of the truck was carrying illicit liquor in the same. The said application of the respondent was rejected by the Metropolitan Magistrate on March 4, 1999.

#. Feeling aggrieved, the respondent preferred a revision before the Sessions Judge. The Sessions Judge, under the impugned order, after setting-aside the order of the Metropolitan Magistrate, directed that interim custody of the truck be given to the respondent on certain terms and conditions enumerated in the impugned order. Feeling aggrieved with this order the State of Gujarat has preferred this revision.

#. I have heard Shri MA Bukhari, learned APP for the revisionist and Shri HR Prajapati, learned counsel for the respondent. A preliminary objection has been raised by Shri HR Prajapati that second revision is not maintainable hence, the revision should be summarily dismissed. But, I do not find any substance in this contention. Against the order of the Metropolitan Magistrate the revision was not filed by the State of Gujarat but, by the respondent and that revision was allowed by the Sessions Judge. Consequently, this revision cannot be said to be a second revision. It could be styled as second revision only when the first revision against the order of the Metropolitan Magistrate would have been filed by the State of Gujarat. Since the order of the Metropolitan Magistrate was set-aside by the Sessions Judge, revision in this Court under sec.397 of the Code of Criminal Procedure was rightly filed and is maintainable.

#. On going through the impugned order, there is not

much scope of interference for the obvious reason that the learned APP, opposing revision in the Court of the Sessions Judge, gave consent that the truck may be given in the interim custody of the respondent before this Court. Once the order was passed in terms of consent of the other side, there remains little opportunity for examining the legality or validity of the impugned order. As such, on this ground alone the revision deserves to be dismissed.

#. Shri MA Bukhari, learned APP has further contended that the order of the Metropolitan Magistrate was an interlocutory order and, as such no revision could lie before the Sessions Judge, in view of the bar created by sec.397(2) of the Code of Criminal Procedure. I am surprised this point was not taken in objection from the side of the State/respondent before the learned Sessions Judge. Even, if it is assumed to be a legal point it can be examined in this revision. I find that the impugned order of the learned Metropolitan Magistrate cannot be said to be interlocutory order. This Court, in Thakkar Mahendraprasad Bapalal v/s. The State of Gujarat 1985 GLH p.61 has held that, "merely because an order under sec.451 is for interim custody, possession and disposal of case property, it cannot be said to be an interlocutory order not revisable by the High Court. It cannot be said to be an interlocutory order in that sense. It is an order which decides the substantial and important rights of the parties and, therefore, revision application against such an order is maintainable."

It was further observed in this case that, "eventhough the order does not finally terminate the proceeding and in that sense it may not be final judgment or order, yet it may decide rights and liabilities of the parties concerning a particular aspect."

The term "interlocutory order" was explained in view of the Apex Court verdict in Amarnath v/s. State of Haryana AIR 1977 S.C. p.2185. The term "interlocutory order" in sec.397(2) has been used in a restricted sense and not in any broad or artistic sense and the interlocutory orders under sec.397 are those orders which do not decide or touch the important rights or liabilities of the parties and any order which substantially affects the rights of the parties or decide certain rights of the parties, cannot be said to be an interlocutory order so as to bar a revision application to the High Court: and the order regarding interim custody of a very very valuable article like truck decides and touches very important right of the parties.

Any party who is denied even interim possession would be substantially and adversely affected by it and would be entitled to invoke revisional jurisdiction of the High Court, because, by such order the Court is affecting and adjudicating important rights of the parties on the particular aspect and such order cannot be said to be an interlocutory order as contemplated by sec.397(2) of the Code of Criminal Procedure.

#. If a practical view of what is contained in sec.451 of the Code of Criminal Procedure is taken in the prevailing situation of arrears of cases then also it cannot be said that order of interim custody is purely interlocutory order. Cases are pending for more than a decade and if during inquiry or trial order for interim custody is passed against a person who is lawfully entitled to claim possession of such case property, his rights can be vitally affected by orders passed against him. Hence, in that view of the matter it cannot be said that such order is interlocutory order or interim order which operates during pendency of the inquiry, investigation or trial. Sec.451 of the Criminal Procedure Code also empowers the Court to pass such orders as is otherwise expedient to do so, including sale of such property or order for otherwise disposal of the property. If a Court passes order for sale of property or otherwise directs disposal of such property then, after such order, the property has to be followed in the hands of the purchaser and consequently also it cannot be said to be an order which is not revisable.

#. Shri Bukhari, learned APP has drawn my attention to the verdict of the Supreme Court in Madhu Limaye v/s. State of Maharashtra 1978 S.C. p.47. After going through the verdict of the Apex Court, I find that the Apex Court has considered the bar imposed under sec.397(2) of the Criminal Procedure Code regarding entertaining a revision against interlocutory order and also inherent powers of the High Court as contained under sec.482 of the Code of Criminal Procedure. The Apex Court observed that, "On a plain reading of sec.482, however, it would follow that nothing in the Code, which would include sub-section (2) of sec.397 also, "shall be deemed to limit or affect the inherent powers of the High Court." The Apex Court further observed that, "if we were to say that the said bar is not to operate in exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional power. In such a situation what is the harmonious way out ? In our opinion a happy solution of this problem would be to say that the bar provided in

sub-section (2) of sec.397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in sec.397(2) of the Code of Criminal Procedure which can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. From the above verdict of the Apex Court, the ratio which has been laid down seems to this effect that, if under the old Code of Criminal Procedure if an order could be corrected in exercise of revisional jurisdiction it should be corrected in revision by the High Court and the High Court should not exercise inherent power under sec.482 of the Criminal Procedure Code. However, in the new Code since a bar has been imposed for entertaining revision against interlocutory order, that bar will not apply in exercise of inherent power of the High Court under sec.482 of the Code of Criminal Procedure. But, for exercising such powers, the Apex Court has laid down guidelines namely such power should be sparingly exercised by the High Court and illustrations have been given. Consequently, to my mind, this case does not help the learned APP in support of his contention that the impugned order of the Metropolitan Magistrate was in nature of interlocutory order. The revision before the Sessions Judge was, therefore, competent and it cannot be said that the Sessions Judge has acted without jurisdiction and committed legal error in entertaining the revision. Coming to the merits of the impugned order passed by the learned Sessions Judge, I find that he has taken into consideration the ingredients of sec.451 of the Criminal Procedure Code and has taken into account as to who is the best person entitled to claim possession of the seized truck. Shri Bukhari, learned APP has contended that interim custody should not have been given

to the respondent because huge quantity of illicit liquor was recovered from the said truck. The truck may be a case property within the meaning of sec.451 of the Code of Criminal Procedure in as much as the vehicle was used for carrying illicit liquor but, it would not be desirable to detain the truck at the police station or to keep under the control of the police. That would naturally ruine the truck. For the possession of truck and interim custody of the truck, order was passed imposing four conditions and those conditions are just, reasonable as well as proper for preservation of the said truck and for production as and when required by the Court during inquiry and trial. Directions have been given not to sell the truck and not to change its colour etc. In such circumstances the impugned order does not suffer from any illegality. The revision is therefore devoid of merits which is hereby dismissed.

September 28, 2000. (D.C. Srivastava, J.)

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